

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 6268 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

=====

1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

RAJENDRAKUMAR KALIDAS RATHOD

Versus

STATE OF GUJARAT

Appearance:

MR RS SANJANWALA for Petitioners

MR ST MEHTA ADDL PUBLIC PROSECUTOR for Respondent No. 1

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 26/10/1999

ORAL JUDGEMENT

#. Heard Mr.Sanjanwala, leaned advocate appearing for the petitioners and Mr.S.T.Mehta, learned APP appearing for respondent State. Rule. Mr.S.T.Mehta, leaned APP appearing for respondent State waives service of rule for respondent State. At the request of the learned advocates appearing for the parties, this matter is taken up for final hearing today.

#. By filing the present petition under Section 482 of Code of Criminal Procedure, the petitioners have prayed for the following main relief;

"10(A) Your Lordships may be pleased to quash and set aside FIR bearing CR No : III/5218/99 of Umargaon Police Station and the petitioners may be exonerated from the said proceedings and all other proceedings pursuant to the said FIR CR.No.III/5218/99 (Annexure-A) and the gur belonging to the petitioner No.4 be released forthwith unconditionally and the tempo No : GJ-15X-1670 belonging to the petitioners be released forthwith unconditionally."

#. This matter was placed on admission Board on 21st October, 1999 and this Court had passed the following order.

"Notice returnable on 26th October, 1999. Learned APP Mr.Mankad for respondent No.1 State. D.S. permitted."

#. Respondent No.2 is served. There is no specific resistance by respondent No.2. After going through the relevant papers as well as documents produced along with the petition, this Court is satisfied that under the bill dated 26th September, 1999, 3000 kgs. rotten gur was sold to one Shah Dilipkumar Chimanlal of Dahnu (Maharashtra) by the present petitioner no.4, the owner, who is having business of gur and the commission agent in the name of style of M/s Silvassa Traders at Selvass (Dadranagar Haveli). The said gur was being transported in motor tempo bearing registration No. GJ-15X-1670 and the same was intercepted by the police. As the rotten gur was loaded in the tempo, the complainant - Assistant Sub Inspector of Umargaon police station lodged a complaint in the Umargaon police station under Section 70A of the Bombay Prohibition Act. It is contended in the FIR that the gur was worth Rs.20,000/-. The driver of the tempo and two laborers had absconded from the spot of interception. Annexure-D and E show that the seller and purchaser are bonafide trader and holding licences for selling and purchasing of gur. Mr.Sanjanwala has drawn attention of this Court on various decision of this Court and has submitted that ratio of the said decisions squarely applies to the facts of this case. According to Mr.Sanjanwala, the materials - gur was owned by petitioner no.4 was sold to the person having similar business in the State of Maharashtra. It is further

argued that it was not possible to transport this very material - gur to Maharashtra without passing through the territory of State of Gujarat and therefore, petitioner no.4 was compelled to transport it through the territory of the State of Gujarat and when the said tempo was passing through the street, the same was intercepted and the FIR was lodged. The averments made in the application is not controverted by any of the respondents. Ld.APP Mr.Mehta has submitted that rotten gur can not be stored and / or consumed in any manner or used in the territory of State of Gujarat and therefore, the rotten gur was seized by the police, should not be released and the same should not be returned to the petitioners as prayed for. On the other hand, Mr.Sanjanwala has also drawn my attention to one of the conditions imposed by this Court while allowing the Criminal Misc. Application No : 750 of 1996 dated 13th September, 1996 (Coram : J.M.Panchal, J.), wherein, this Court had directed the owner of the Mudamal - gur that he shall not use or shall not consume the mudamal gur in the territory of State of Gujarat and will straightaway take the mudamal to particular destination in the State of Maharashtra. Similar conditions can be imposed by this Court while granting the appropriate relief to the petitioner. The documents produced by the petitioner support the say of the petitioners and therefore, Rule shall have to be made absolute. Of course, certain conditions and directions are imposed as under.

- (1) The Mudamal rotten gur and the tempo seized by the police shall be released.
- (2) FIR bearing No.CR/III/5218/99 lodged in Umargaon police station is quashed and set aside.
- (3) The Mudamal gur and the tempo bearing registration No : GJ-15-X-1670 is ordered to be released on the following conditions;
 - 3.1 The Muddamal goods attached from the truck in question be released to the petitioners on their undertaking to the Court that the goods shall not be stored or used or consumed in Gujarat Territory and will be taken to its destination in State of Maharashtra.
 - 3.2 The petitioner shall carry the goods in the tempo in question under police escort to be given by the police authorities at the costs of the petitioners.

3.3 The tempo bearing registration no. GJ-15-X-1670 shall be released in favour of the petitioner after proper verification.

3.4 In the event of use of the very vehicle in transport of the rotten gur through the territory of the State of Gujarat, the petitioner shall intimate the concerned police station telegraphically stating the root of the tempo and the name of the purchasing party in advance to avoid inconvenience.

Rule is made to the extent indicated hereinabove.
Direct Service is permitted.

Date : 26-10-1999 [C.K.Buch, J.]

#kailash#